

COMMITTEE SUBSTITUTE  
FOR  
COMMITTEE SUBSTITUTE  
FOR  
**Senate Bill No. 428**

(By Senator Stollings)

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[Originating in the Committee on the Judiciary;  
reported March 26, 2013.]

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A BILL to amend and reenact §16-3C-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §16-4-19 of said code, all relating generally to testing for HIV and sexually transmitted diseases; removing limitations on billing patients for HIV and sexually transmitted disease testing or sexually transmitted disease treatment done by state or local public health agencies; and clarifying the procedures relating to performing HIV or sexually transmitted disease tests on persons charged with sexual offenses.

*Be it enacted by the Legislature of West Virginia:*

That §16-3C-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §16-4-19 of said code be amended and reenacted, all to read as follows:

**ARTICLE 3C. AIDS-RELATED MEDICAL TESTING AND  
RECORDS CONFIDENTIALITY ACT.**

**§16-3C-2. Testing.**

1 (a) HIV-related testing ~~on a voluntary basis~~ should be  
2 recommended by ~~any healthcare provider~~ providers ~~in a~~  
3 ~~health facility~~ as part of a routine screening for treatable  
4 conditions and as part of routine prenatal and perinatal care.  
5 A physician, dentist, nurse practitioner, nurse midwife,  
6 physician assistant or the commissioner may ~~also~~ request  
7 targeted testing for any of the following:

8 (1) When there is cause to believe that the test could be  
9 positive. Persons who engage in high-risk behavior should  
10 be encouraged to be screened for HIV at least annually;

11 (2) When there is cause to believe that the test could  
12 provide information important in the care of the patient; ~~or~~

13 (3) When there is cause to believe that the results of HIV  
14 testing of samples of blood or body fluids from a source  
15 patient could provide information important in the care of  
16 medical or emergency responders or other persons identified

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17 in regulations proposed by the department for approval by  
18 the Legislature in accordance with the provisions of article  
19 three, chapter twenty-nine-a of this code: *Provided*, That the  
20 source patient whose blood or body fluids is being tested  
21 pursuant to this section must have come into contact with a  
22 medical or emergency responder or other person in such a  
23 way that a significant exposure has occurred; or

24 (4) When there is no record of any HIV-related or other  
25 sexually transmitted disease testing during pregnancy and the  
26 woman presents for labor and delivery.

27 (b) All patients who seek an HIV test shall be responsible  
28 for paying the costs of the testing, whether they are tested by  
29 a private healthcare provider, the bureau or at a local health  
30 department. A local health department may charge in  
31 accordance with its existing fee schedules and may charge  
32 patients on a sliding fee scale.

33 ~~(b)~~ (c) A patient ~~voluntarily~~ consents to the test as  
34 follows when:

35 (1) The patient is informed either orally or in writing that  
36 HIV-related testing will be performed as part of his or her  
37 routine care, that HIV-related testing is voluntary and that the  
38 patient may decline HIV-related testing (opt out); or

39 (2) The patient is informed that the patient's general  
40 consent for medical care includes consent for HIV-related  
41 testing.

42 ~~(c)~~ (d) A patient ~~refuses to consent to the test if a patient~~  
43 who opts out of HIV-related testing, ~~the patient is informed~~  
44 ~~when the health care provider in the provider's professional~~  
45 ~~opinion believes HIV-related testing is recommended, and~~  
46 shall be informed that HIV-related testing may be obtained  
47 anonymously at a local or county health department.

48 ~~(d)~~ (e) Any person seeking an HIV-related test ~~in~~ at a  
49 local or county health department, or other HIV test setting  
50 provided by the commissioner, who wishes to remain  
51 anonymous has the right to do so, and to be provided written  
52 informed consent through use of a coded system with no  
53 linking of individual identity to the test request or results.  
54 Such persons may be required to pay the costs of the HIV-  
55 related testing.

56 ~~(e)~~ (f) No option to opt out of HIV-related testing is  
57 ~~required~~ exists and the provisions of subsection (a) and ~~(b)~~  
58 (c) of this section do not apply for the following:

59 (1) A health care provider or health facility performing an  
60 HIV-related test on the donor or recipient when the health

61 care provider or health facility procures, processes,  
62 distributes or uses a human body part (including tissue and  
63 blood or blood products) donated for a purpose specified  
64 under the uniform anatomical gift act, or for transplant  
65 recipients, ~~or~~ of semen provided for the purpose of artificial  
66 insemination, and such test is necessary to assure medical  
67 acceptability of a recipient or such gift or semen for the  
68 purposes intended;

69 (2) The performance of an HIV-related test in  
70 documented bona fide medical emergencies, as determined  
71 by a treating physician taking into account the nature and  
72 extent of the exposure to another person, when the subject of  
73 the test is unable or unwilling to grant or withhold consent,  
74 and the test results are necessary for medical diagnostic  
75 purposes to provide appropriate emergency care or treatment  
76 to a medical or emergency responder, or any other person  
77 who has come into contact with a source patient in such a  
78 way that a significant exposure necessitates HIV testing or to  
79 a source patient who is unable to consent in accordance with  
80 rules proposed by the department for approval by the  
81 Legislature in accordance with article three, chapter twenty-  
82 nine-a of this code: *Provided*, That necessary treatment may

83 not be withheld pending HIV test results: *Provided, however,*  
84 That all sampling and HIV testing of samples of blood and  
85 body fluids, without the opportunity for the source patient or  
86 patient's representative to opt out of the testing, shall be  
87 through the use of a pseudonym and in accordance with rules  
88 proposed by the department for approval by the Legislature  
89 in accordance with article three, chapter twenty-nine-a of this  
90 code; or

91 (3) The performance of an HIV-related test for the  
92 purpose of research if the testing is performed in a manner by  
93 which the identity of the test subject is not known and may  
94 not be retrieved by the researcher.

95 (f) (g) Mandated testing:

96 (1) The performance of any HIV-related testing that is or  
97 becomes mandatory by a magistrate or circuit court order or  
98 other legal process described herein does not require consent  
99 of the subject but ~~will~~ may include counseling.

100 (2) The ~~court having jurisdiction of the criminal~~  
101 ~~prosecution shall order that an~~ prosecuting attorney shall,  
102 upon the request of the victim or the victims's parent or legal  
103 guardian, and with notice to the defendant or juvenile  
104 respondent, apply to the court for an order directing that an

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105 appropriate human immunodeficiency virus, HIV-related test  
106 be performed on ~~any persons~~ a defendant charged with any  
107 of the following crimes or a juvenile subject to a petition  
108 involving any of these offenses:

109 (i) (A) Prostitution; or

110 (ii) (B) Sexual abuse, sexual assault, or incest ~~or sexual~~  
111 ~~molestation.~~

112 (3) The court shall require the defendant or juvenile  
113 respondent to submit to the testing not later than forty-eight  
114 hours after the issuance of the order, unless good cause for  
115 delay is shown upon a request for a hearing: *Provided, That*  
116 no such delay shall cause the HIV-related testing to be  
117 administered later than forty-eight hours after the filing of  
118 any indictment regarding an adult defendant or the  
119 adjudication order regarding a juvenile respondent. As soon  
120 as practical, test results shall be provided to the prosecuting  
121 attorney, who shall promptly provide the results to the victim  
122 or victim's parent or legal guardian, and to counsel for the  
123 defendant or juvenile respondent. The test results shall also  
124 be transmitted to the court having jurisdiction over the trial  
125 of the matter, to be maintained pursuant to the provisions of  
126 this article.

127       (3) (4) HIV-related tests performed on persons charged  
128 with prostitution, sexual abuse, sexual assault or incest ~~or~~  
129 ~~sexual molestation~~ shall be confidentially administered by a  
130 designee of the bureau or the local or county health  
131 department having proper jurisdiction. The commissioner may  
132 designate health care providers in regional ~~jail~~ jails or other  
133 correctional facilities to administer HIV-related tests on such  
134 persons if he or she determines it necessary and expedient.  
135 Nothing in this section shall be construed to prevent the court  
136 from ordering at any time, during which the charge or juvenile  
137 petition is pending, that the defendant or juvenile submit to one  
138 or more appropriate tests to determine if he or she is infected  
139 with HIV. The court may also order follow-up tests for HIV  
140 as may be medically appropriate. The results of any such test  
141 shall be provided as soon as practical in accordance with  
142 subdivision (3) of this subsection. The cost of testing may be  
143 charged to the defendant or juvenile respondent, unless  
144 determined unable to pay by the court having jurisdiction over  
145 the matter. If the defendant or juvenile is unable to pay, the  
146 cost of the HIV testing may be borne by the regional jail or  
147 other correctional or juvenile facility, the bureau or by the  
148 local health department.



149       (5) In the event the victim, parent or legal guardian fails  
150 to request HIV-related testing of the defendant or juvenile  
151 respondent within the time period set forth in this subsection,  
152 the victim, parent or legal guardian may request that HIV-  
153 related testing be performed on the defendant or juvenile  
154 respondent at any subsequent time after the date of the  
155 defendant's conviction or the juvenile's disposition:  
156 Provided, That the prosecuting attorney shall make  
157 application to the court as provided in subdivision (2) of this  
158 subsection.

159       ~~(4)~~ (6) When the Commissioner of the Bureau of Public  
160 Health knows or has reason to believe, because of medical or  
161 epidemiological information, that a person, including, but not  
162 limited to, a person such as an IV drug abuser, or a person  
163 who may have a sexually transmitted disease, or a person  
164 who has sexually ~~molested~~, abused or assaulted another, has  
165 HIV infection and is or may be a danger to the public health,  
166 he or she may issue an order to:

167       ~~(i)~~ (A) Require a person to be examined and tested to  
168 determine whether the person has HIV infection;

169       ~~(ii)~~ (B) Require a person with HIV infection to report to  
170 a qualified physician or health worker for counseling; ~~and~~

171       ~~(iii)~~ (C) Direct a person with HIV infection to cease and  
172 desist from specified conduct which endangers the health of  
173 others; and

174       (D) Bill that person for the necessary laboratory and  
175 associated costs for counseling and testing either directly or  
176 by billing the person's medical insurance provider.

177       ~~(5)~~ (7) If any person violates a cease-and-desist order  
178 issued pursuant to this section and, by virtue of that violation,  
179 the person presents a danger to the health of others, the  
180 commissioner shall apply to the circuit court of Kanawha  
181 County to enforce the cease-and-desist order by imposing  
182 any restrictions upon the person that are necessary to prevent  
183 the specific conduct that endangers the health of others.

184       ~~(6)~~ (8) A person convicted or a juvenile adjudicated of  
185 the offenses described in this section shall be required to  
186 undergo HIV-related testing and counseling immediately  
187 upon conviction or adjudication and the court having  
188 jurisdiction of the ~~criminal prosecution~~ matter may not  
189 release the convicted or adjudicated person from custody and  
190 shall revoke any order admitting the defendant or juvenile to  
191 bail until HIV-related testing and counseling have been  
192 performed and the result is known: Provided, That if the

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193 person convicted or adjudicated has been tested in  
194 accordance with the provisions of this subsection, and the  
195 result was positive, that person need not be retested. The  
196 HIV-related test result obtained from the convicted or  
197 adjudicated person is to be transmitted to the court and, after  
198 the convicted or adjudicated person is sentenced or  
199 disposition ordered for the adjudicated juvenile, made part of  
200 the court record. If the convicted or adjudicated person is  
201 placed in the custody of the Division of Corrections or  
202 Regional Jail and Correctional Facility Authority, or if the  
203 adjudicated juvenile is placed in the custody of the Division  
204 of Juvenile Services or other out-of-home placement, the  
205 court shall transmit a copy of the convicted or adjudicated  
206 person's HIV-related test results to the ~~Division of~~  
207 ~~Corrections~~ appropriate custodial agency. The HIV-related  
208 test results shall be closed and confidential and disclosed by  
209 the court and the bureau only in accordance with the  
210 provisions of section three of this article.

211 (7) (9) The prosecuting attorney shall inform the victim,  
212 or parent or guardian of the victim, at the earliest stage of the  
213 proceedings of the availability of voluntary HIV-related  
214 testing and counseling conducted by the bureau and that his

215 or her best health interest would be served by submitting to  
216 HIV-related testing and counseling. HIV-related testing for  
217 the victim shall be administered at his or her request on a  
218 confidential basis and shall be administered in accordance  
219 with the Centers for Disease Control and Prevention  
220 guidelines of the United States Public Health Service in  
221 effect at the time of such request. The victim who obtains an  
222 HIV-related test shall be provided with ~~pre~~ pretest and post-  
223 test counseling regarding the nature, reliability and  
224 significance of the HIV-related test and the confidential  
225 nature of the test. ~~HHV-related testing and counseling~~  
226 ~~conducted pursuant to this subsection shall be performed by~~  
227 ~~the designee of the commissioner of the bureau or by any~~  
228 ~~local or county health department having proper jurisdiction.~~

229 (8) (10) If a person receives counseling or is tested under  
230 this subsection and is found to be HIV infected and the  
231 person is not incarcerated, the person shall be referred by the  
232 health care provider performing the counseling or testing for  
233 appropriate medical care and support services. The local or  
234 county health departments or any other agency under this  
235 subsection ~~may~~ shall not be held financially responsible for  
236 medical care and support services.

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237       (9) (11) The commissioner of the bureau or his or her  
238 designees may require an HIV test for the protection of a  
239 person who was possibly exposed to HIV-infected blood or  
240 other body fluids as a result of receiving or rendering  
241 emergency medical aid or who possibly received such  
242 exposure as a funeral director. Results of such a test of the  
243 person causing exposure may be used by the requesting  
244 physician for the purpose of determining appropriate therapy,  
245 counseling and psychological support for the person  
246 rendering emergency medical aid including good Samaritans,  
247 as well as for the patient or individual receiving the  
248 emergency medical aid.

249       (10) (12) If an HIV-related test required on persons  
250 charged with or convicted of prostitution, sexual abuse,  
251 sexual assault or incest or sexual molestation results in a  
252 negative reaction, upon motion of the state, the court having  
253 jurisdiction over the criminal prosecution may require the  
254 subject of the test to submit to further HIV-related tests  
255 performed under the direction of the bureau in accordance  
256 with the Centers for Disease Control and Prevention  
257 guidelines of the United States Public Health Service in  
258 effect at the time of the motion of the state.

259       ~~(11)~~ (13) The costs of mandated testing and counseling  
260 provided under this subsection and ~~pre~~ preconviction and  
261 post-conviction HIV-related testing and counseling provided  
262 the victim under the direction of the bureau pursuant to this  
263 subsection shall be paid by ~~the bureau~~ the individual to be  
264 tested or his or her medical insurance provider, if possible.

265       ~~(12)~~ (14) The court having jurisdiction of the criminal  
266 prosecution shall order a person convicted of prostitution,  
267 sexual abuse, sexual assault or incest ~~or sexual molestation~~ to  
268 pay restitution to the state for the costs of any HIV-related  
269 testing and counseling provided the convicted person and the  
270 victim, unless the court has determined the convicted person  
271 to be indigent.

272       ~~(13)~~ (15) Any funds recovered by the state as a result of  
273 an award of restitution under this subsection shall be paid  
274 into the State Treasury to the credit of a special revenue fund  
275 to be known as the HIV-Testing Fund which is hereby  
276 created. The moneys so credited to the fund may be used  
277 solely by the bureau for the purposes of facilitating the  
278 performance of HIV-related testing and counseling under the  
279 provisions of this article.

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280 ~~(g) Nothing in this section is applicable to any insurer~~  
281 ~~regulated under chapter thirty-three of this code. *Provided,*~~  
282 ~~That the commissioner of insurance shall develop standards~~  
283 ~~regarding consent for use by insurers which test for the~~  
284 ~~presence of the HIV antibody.~~

285 (h) Whenever consent of the subject to the performance  
286 of HIV-related testing is required under this article, any such  
287 consent obtained, whether orally or in writing, shall be  
288 considered to be a valid and informed consent if it is given  
289 after compliance with the provisions of subsection ~~(b)~~ (c) of  
290 this section.

**ARTICLE 4. SEXUALLY TRANSMITTED DISEASES.**

**§16-4-19. Voluntary submission to examination and treatment;  
charges; disposition of money collected.**

1 (a) Any ~~resident of the state~~ person may at any time  
2 report go to any municipal or county health officer having  
3 ~~jurisdiction of the case~~ department and voluntarily submit  
4 ~~himself or herself~~ to all tests and examination ~~as are~~  
5 necessary to ascertain whether ~~in fact~~ the person ~~submitting~~  
6 ~~himself or herself for examination~~ is infected with a venereal  
7 sexually transmitted disease. ~~and said~~ The health officer to  
8 ~~whom any party has applied as above for tests and~~

9 ~~examination department shall provide for making all such~~  
10 conduct and administer all necessary tests and examinations  
11 ~~as are necessary to ascertain whether in fact said party so~~  
12 applying be so infected with a venereal the person has any  
13 sexually transmitted disease. Any person who is tested for  
14 sexually transmitted diseases at a local health department  
15 shall be responsible for paying the reasonable costs of  
16 testing, either directly or through billing the person's medical  
17 provider. Local health departments may charge in  
18 accordance with their existing fee schedules and may charge  
19 patients for such testing on a sliding fee scale.

20 (b) If such tests and examinations show ~~said party so~~  
21 ~~applying to be so infected~~ the person to have a sexually  
22 transmitted disease, then ~~said party~~ the person shall elect  
23 whether he or she will take treatment ~~of~~ from a private  
24 physician, or whether he or she will take treatment ~~to be~~  
25 ~~provided by~~ from the local health officer ~~through a clinic or~~  
26 ~~otherwise~~ department, and if he or she elects to take  
27 treatment through the local health officer's arrangement  
28 department, he or she may be required to pay for such  
29 treatment ~~at a charge which shall in no case exceed the sum~~  
30 ~~of \$5 for each dose of "neo" or arsphenamine administered~~



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31 ~~for syphilis, and at a nominal cost for other medicines used;~~  
32 ~~but if the patient is unable to pay anything, he or she shall be~~  
33 ~~treated free of charge under the direction of the local health~~  
34 ~~officer, at a clinic or otherwise~~ either directly or by the local  
35 health department billing the person's health insurance  
36 provider. Local health departments may charge in accordance  
37 with their existing fee schedules and may charge patients for  
38 treatment on a sliding fee scale.

39 (c) All proper charges for such examination and treatment  
40 as that may be necessary hereunder shall be a proper charge  
41 against the municipality or county, paid by the individual or  
42 by that person's health insurance provider. as the case may  
43 ~~be, whether said party so taking treatment lived in or out of~~  
44 ~~a municipal corporation. And whether said person proposing~~  
45 ~~to take treatment as provided hereunder elect to take from a~~  
46 ~~private physician or elect to take treatment under the~~  
47 ~~direction of the local health officer, he or she shall first sign~~  
48 ~~the agreement required to be signed by persons about to be~~  
49 ~~released from detention or quarantine, and shall observe all~~  
50 ~~its provisions, and so long as such person so signing shall so~~  
51 ~~observe these provisions he or she need not be detained or~~  
52 ~~quarantined pending treatment, except that no person who is~~

~~53 known as a prostitute, or as a person associating with such,  
54 or as a person who resides in any house having the reputation  
55 of being a house of prostitution, or who frequents the same,  
56 shall be allowed at liberty if infected with a venereal disease  
57 in an infectious stage, even though he or she does voluntarily  
58 submit for examination and treatment and does take treatment  
59 under the provisions of this section.~~

60     (d) All money collected under this section shall be paid  
61 ~~into a clinic fund, if one is provided, and if not then into the~~  
62 ~~county or city treasury, as the case may be; to the local health~~  
63 ~~department doing the testing and the local health officer~~  
64 ~~having jurisdiction department shall collect and account for~~  
65 ~~such the funds collected hereunder.~~